

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6775

Petition of Chandler Electric Company for Injunctive)	
and Other Relief Against Central Vermont Public)	Hearing at
Service Corporation)	Newfane, Vermont
		November 15, 2002

Order entered: 2/21/2003

PRESENT: John D. Burke, Esq., Board Member, Hearing Officer

APPEARANCES: Charles Chandler
for Chandler Electric Company

Morris L. Silver, Esq.
for Central Vermont Public Service Corporation

June E. Tierney, Esq.¹
for Vermont Department of Public Service

I. INTRODUCTION

This case concerns a petition filed by Chandler Electric Company ("Chandler Electric or Petitioner") on October 29, 2002. The petition contained a "Complaint and Petition for Emergency Injunctive Relief" and a request for a "Temporary Restraining Order and Request for Sanctions", along with supporting affidavits.

On October 30, 2002, the Vermont Public Service Board ("Board or PSB") issued its "Order Denying Temporary Restraining Order and Notice of Hearing on Preliminary Injunction". Pursuant to 30 V.S.A. Sections 8 and 10 and Public Service Board Rule 2.406, a hearing was held, as scheduled, on Friday, November 15, 2002, at 10 a.m. at the Windham Superior Court, 7 Court Street in Newfane, Vermont.

1. Notice of Appearance filed. Did not attend hearing.

II. FINDINGS

Based upon the substantial evidence of record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

Background

1. Chandler Electric is an electrical contractor that is in the business of constructing "service extensions" and "service relocations" for customers seeking to take or taking electric service from Central Vermont Public Service Corporation ("CVPS", "Central Vermont" or "Company"). Pet. at 1.

2. Central Vermont is a Vermont corporation operating as an integrated electric utility in the state of Vermont, and, as such, is a "company" within the meaning of 30 V.S.A. § 201 that is subject to the regulatory and rate-setting authority of the Board. Exh. CV-1.

3. Mr. Warner Manzke is an applicant for electric service from Central Vermont. He has made a request for the development of a service extension in order to serve a house he is building within the CVPS service area located in the Town of Jamaica, Vermont. Mr. Manzke recently engaged Petitioner to construct a service extension to a location adjacent to existing CVPS network facilities on lands owned by his neighbor, Mr. Donald Tarinelli. Mr. Manzke's service extension is the subject of this docket. Tr. 11/15/02 at 23-26.

4. On October 29, 2002, Petitioner filed a "Complaint and Petition for Emergency Injunctive Relief," and a "Temporary Restraining Order and Request for Sanctions," along with supporting affidavits with the Board commencing this proceeding. In its filing, Petitioner contends that Central Vermont has inappropriately refused to energize an electrical service that Petitioner installed for Mr. Manzke. Docket No. 6775, Order of October 30, 2002, at 1.

5. Petitioner further alleges that the work stoppage on the subject Manzke job is costing it over \$2,000 per day. Petitioner requests that the Board order Central Vermont to energize this service, require the Company to reimburse Petitioner for damages, and grant other relief as is fair or just. Docket No. 6775, Order of October 30, 2002, at 1.

6. Petitioner also asserts that Central Vermont and its employees "degrade" Petitioner's customers by using derogatory terms to refer to these customers, that Central Vermont "displays extremely hostile and violent behavior to [Petitioner] and to some of [Petitioner's] customers,"

and that Central Vermont has allowed its employees "to be verbally abusive and combative" to Petitioner and its customers. *See* Petitioner's Temporary Restraining Order and Request for Sanctions, dated 10/28/02. Petitioner further alleges that when it informs Central Vermont of work that Petitioner is performing, Central Vermont tells the customers to do the work themselves. Petitioner also complains that Central Vermont has told it of problems with work performed by Petitioner when, in fact, no problem existed, thus requiring Chandler Electric to expend time and money to investigate the reported problem. *Id.*; Docket No. 6775, Order of October 30, 2002, at 1-2.

7. On October 30, 2002, Central Vermont filed a Memorandum in Opposition to Petitioner's request for emergency injunctive relief, with a supporting affidavit, arguing that Petitioner failed to meet the standard for issuance of a temporary restraining order. Central Vermont also contended that it had acted in conformance with the provisions of its Electric Service Tariff, VPSB No. 6 (the "CVPS Tariff" or "Tariff"), as on file with and approved by the Board from time to time, and that the Company had not made abusive or harassing statements toward Petitioner or its customers. Docket No. 6775, Order of October 30, 2002, at 2.

8. By Order dated October 30, 2002, the Board denied Petitioner's requests for emergency injunctive relief and for a temporary restraining order, and set this matter for a prompt hearing on Petitioner's request for a preliminary injunction. *Id.* at 3.

9. On November 8, 2002, Central Vermont filed a Cross-Petition requesting that the Board issue a preliminary and permanent injunction requiring that Petitioner cease and desist from taking actions effecting Central Vermont's electric system that are in contravention of the terms and conditions of the Company's Tariff.

10. On November 14, 2002, Petitioner filed a response to Central Vermont's Cross-Petition. Copies of that response had not been served on Central Vermont's counsel of record at the time of the November 15, 2002, hearing. Tr. 11/15/02 at 6.

11. The CVPS Cross-Petition will be addressed at a later proceeding. Tr. 11/15/02 at 198-200.

12. The Board has jurisdiction to hear this matter pursuant to 30 V.S.A. §§ 208 and 209.

13. In accordance with the requirements of 30 V.S.A. § 225, the rates, rules and regulations for electric service provided by Central Vermont are set forth in the CVPS Tariff which is on file with and has been approved by the PSB.

14. While the Board has requisite jurisdiction to hear the substance of Petitioner's complaint, the Board does not have the authority to rule on Petitioner's claims for damages alleged to have been caused by Central Vermont's actions that are the subject of Board supervision. *See* Green Mountain Power Corporation v. Sprint Communications, Docket No. 2000-155, Slip Opinion filed August 17, 2001, 172 Vt. 416 (2001); and Trybulski v. Bellows Falls Hydro-Electric Corp., 112 Vt. 1 and 9 (1941).

15. Central Vermont's Tariff, that sets forth the terms and conditions for service within the CVPS service area including the Company's service extension policy, was admitted into evidence as exhibit CVPS-1.

16. The CVPS Tariff contains a variety of terms and conditions that are applicable to the construction of service extensions and service relocations, and their interconnection to the Central Vermont electric system. *See* tr. of 11/15/02 at 99 (Morse) and exh. CVPS-1. The use of service provided by Central Vermont causes the user of the service to become subject to the Company's rules and regulations whether service is furnished pursuant to contract, agreement, application or otherwise. *See* exh. CVPS-1 (Tariff at 2nd Revised Sheet 5).

17. The CVPS service extension Tariff was developed and filed with the Board in accordance with the requirements of the Order of September 21, 1999, in Docket No. 5496, Board investigation into electric distribution line extension policies for the purpose of developing Board rules related to line extensions. *See* tr. of 11/15/02 at 102 (Morse).

18. The CVPS service extension Tariff is applicable in connection with "[a]ll single-phase and multi-phase service extensions and service relocations at distribution voltage". *See* exh. CVPS-1 (Tariff at ¶ 3(A)).

19. Pursuant to the CVPS Tariff, a customer is entitled to contract with a private contractor for the construction of his or her service extension or service relocation. *See* tr. of 11/15/02 at 130 (Miller); and exh. CVPS-1 (Tariff at ¶ 3(C)(5)).

20. A "Service Extension" is defined by the Tariff as:

". . . the electric facilities required to connect the power line existing at the time of the request for service to the customer's premises. The service extension shall include all poles, primary wiring, secondary wiring, transformer(s), meter(s), right-of-way acquisition and clearing, trenching and backfilling, and any other one-time cost items associated with service only to that new customer."

Exh. CVPS-1 (Tariff at ¶ 3(B)(1)).

21. Prior to the start of any construction of a service extension or a service relocation, the customer is required to notify CVPS and inform the Company of his or her decision to construct said service extension or relocation. *See* tr. of 11/15/02 at 130 (Miller); and exh. CVPS-1 (Tariff at ¶ 3(C)(5)).

22. When a customer opts to construct his or her own service extension or service relocation, all construction and materials for said service are required by the Tariff to be in accordance with Central Vermont's distribution standards and specifications. *See* tr. of 11/15/02 at 130 (Miller); and exh. CVPS-1 (Tariff at ¶ 3(C)(5)).

23. The service extension Tariff states that:

"The company will determine job specifications for each individual line extension or relocation upon application for the service by the customer. These job specifications will be the standards to which each new extension or relocation must conform. A copy of the company's distribution standards and specifications is available upon request through any company office. The company's standards and specifications shall, at a minimum, meet NESC standards. No single-phase line extension applicant shall receive service at a nominal voltage in excess of 480 volts unless special circumstances are approved by the company in writing. The company shall not connect any line extension or relocation to its system which does not conform to its applicable job specifications and standards."

See exh. CVPS-1 (Tariff at ¶ 3(D)(1)).

24. Upon request of either the customer or the contractor, CVPS will provide plans, specifications and materials lists for service extensions or service relocations. *See* tr. of 11/15/02 at 130 (Miller); and exh. CVPS-1 (Tariff at ¶ 3(C)(5)).

25. CVPS publishes a brochure that is available to contractors which describes the Company's procedures for initiating and performing service extension and relocation work. A copy of the brochure was admitted into evidence as exhibit CVPS- 2. *See* tr. of 11/15/02 at 130 (Miller).

26. Copies of the CVPS service requirements are posted on the CVPS website (www.CVPS.com) or are available from CVPS directly. As applicable, the Company will provide contractors construction standards as part of the plans and specifications for the subject jobs. *See* tr. of 11/15/02 at 130 (Miller); and exh. CVPS-2 (Contractor Brochure).

27. CVPS also publishes a copy of its service extension policy that is available to customers and contractors. The line extension policy sets forth the Tariff requirements for service extensions and service relocations. A copy of the brochure containing the service extension policy was admitted into evidence as exhibit CVPS-3.²

28. Pursuant to the Tariff, residential customers may install, own and maintain their own primary underground cable, but shall not own and maintain overhead primary circuits without the prior written approval of CVPS and the obtaining of a waiver by the Company from the Public Service Board. *See* exh. CVPS -1 (Tariff at ¶ 3(C)(2)). This policy is based upon and consistent with the Board's ruling in Docket No. 5496 that "residential customers should not be allowed to own such primary overhead distribution lines." *See* Order of September 21, 1999, at 14-16; and tr. of 11/15/02 at 102 (Morse).

29. The Tariff provides that CVPS shall not connect any customer-built service extension or relocation that does not conform to the Company's applicable job specifications and standards. *See* exh. CVPS-1 (Tariff at ¶ 3(C)(5)).

30. In a variety of locations, the tariff provides that all connections to the CVPS system shall be made by the Company and not the customer or its contractor. Specifically, the Tariff states, "[a]ll primary cable terminations must be made by the Company." *See* exh. CVPS-1 (Tariff at ¶ 3(C)(5)). Similarly, paragraph 8 of the CVPS Tariff that defines the requirements for "service connections" states:

2. Paragraph 3(H)(1) of the service extension Tariff states:

"The company shall provide a copy of this policy to each owner of any property, the owner's agent, or the occupant with the consent of the owner, who makes application for service requiring a line extension or relocation."

Exh. CVPS - 1.

"The Company reserves the right to require an inspection of all wiring equipment and appurtenances furnished by the Customer, and to approve said equipment and appurtenances before supplying energy to them, and if in the judgment of the Company said equipment and appurtenances are inadequate or unsafe, the Company reserves the right to refuse to supply energy until said equipment or appurtenances are put in proper condition. ***The Customer shall wire to the point mutually acceptable to him and the Company, at which point the Company will connect its service.*** When a Customer desires that energy be delivered at a point or in a manner other than that designated by the Company, the Customer shall pay any additional cost incurred by the Company."

Id.

31. When a contractor constructs a service extension or relocation it must be inspected by Central Vermont to assure that it conforms to the requirements of the CVPS Tariff. In pertinent part the Tariff states:

"All construction shall be subject to inspection and monitoring by the company at the customer's expense."

See exh. CVPS-1 (Tariff at Original Sheet 8.3-1).

32. CVPS also participates in the selection of the meter location at the customer's premises. Paragraph 1 of the Tariff states in pertinent part:

"Upon receipt of an application from a Prospective Customer setting forth the location of the premises to be served, the extent of service to be required and other pertinent information, the Company shall advise the Customer of the type and character of the service it will furnish, the point at which service will be delivered, and the location to be provided for the Company's metering equipment."

Exh. CVPS-1.

Manzke Service Extension Description
and Related Issues

33. On October 26, 2001, Mr. Manzke filed an application with CVPS for the development of a service extension to provide electric service to his new home. Tr. 11/15/02 at 24,34 and 132; exh. CVPS-7.

34. The Manzke property is located on a legal trail that is not presently served with electricity except by on site generation installed by Mr. Manzke to facilitate construction of his new home. Tr. 11/15/02 at 24-27 and 189-190; exh. CVPS-7.

35. Subsequent to the application for service, CVPS conducted a survey and developed a plan for the construction of the requested service extension. Tr. 11/15/02 at 24 and 132-133; exh. CVPS-7.

36. Central Vermont's design for the Manzke service extension was made in accordance with the Company's distribution standards and specifications. Tr. 11/15/02 130-139; exh. CVPS-7.

37. Central Vermont undertook the effort to obtain rights-of-way and easements for the placement and maintenance of the equipment and facilities necessary to serve the Manzke property. The final right-of-way easement necessary for the Company's placement and maintenance of the service extension was obtained on March 11, 2002. Tr. 11/15/02 at 132-133; exh. CVPS-7.

38. In the process of obtaining the necessary rights-of-way, Central Vermont encountered difficulties with adjoining landowners, requiring that the Company redesign and re-stake the Manzke service extension. Tr. 11/15/02 at 132-133; exh. CVPS-7.

39. The final design for the Manzke service extension involved the development of a line and related facilities that were determined to be 3,329 feet long. Tr. 11/15/02 at 133; exhs. CVPS-6 and 7.

40. A service extension that is 3,329 feet long in the Town of Jamaica requires an Act 250 permit before it can be constructed. Tr. 11/15/02 at 193; exh. CVPS-7.

41. The Manzke service extension runs through heavily wooded areas and crosses designated wetlands. Prior to completing the application for an Act 250 permit for the service extension, CVPS met with state wetland officials to resolve permitting issues associated with the Manzke service extension. Tr. 11/15/02 at 143 and 188.

42. On or about April 25, 2002, Central Vermont made an application with the District No. 2 Environmental Commission for an Act 250 permit to construct the Manzke service extension. The District Commission requested additional information from CVPS regarding this application

on April 30, 2002. The Application was deemed to be complete on May 6, 2002, and docketed as application No. 2W1146 for a project described as construction of approximately 3,300 feet of single-phase electric distribution and telephone line. Tr. 11/15/02 at 188; exh. CVPS-7.

43. The District No. 2 Environmental Commission held a hearing on Central Vermont's application on June 10, 2002. Tr. 11/15/02 at 188; exh. CVPS-7.

44. As of the time of the filing of the subject Petition, the District No. 2 Environmental Commission had yet to act on Central Vermont's request for an Act 250 permit for the Manzke service extension. Tr. 11/15/02 at 189; exh. CVPS-7.

45. The District No. 2 Environmental Commission engaged in substantial deliberations regarding Central Vermont's Act 250 permit application for the Manzke service extension. In part, Central Vermont understood that the Commission was concerned with the impact of the proposed service extension on growth given that the Manzke property is remotely located and the concern that extension of electric service to unserved areas may promote sprawl. Tr. 11/15/02 at 188-189.

46. At no time prior to October, 2002, did Mr. Manzke or Petitioner request from CVPS a copy of the plans, specifications or materials list for the service extension. Tr. 11/15/02 at 39, 92 and 138-140; exh. CVPS-7.

47. On or about October 21, 2002, Petitioner contacted Central Vermont to request that the Company energize an underground service at CVPS Line 72, Pole 42, the proposed pole of origination for a line extension to serve Mr. Manzke's property. This line extension was designed by Chandler Electric. This location is not on Mr. Manzke's premises but on the lands of Mr. Manzke's neighbor, Mr. Tarinelli. Tr. 11/15/02 at 86-87 and 138; exh. CVPS-7. Neither Mr. Manzke or the Petitioner provided notice to CVPS, prior to the commencement of construction of the underground service, that Mr. Manzke desired to own and develop his service extension. Id.; tr. 11/15/02 at 38-40.

48. Petitioner has never provided plans or specifications for its final design of the Manzke service extension to Central Vermont nor was it admitted into evidence at the hearing. Tr. 11/15/02 at 86-93, 137-160.

49. On October 23, 2002, CVPS personnel visited the Manzke premises to inspect Petitioner's request for service. Tr. 11/15/02 at 88-89; exh. CVPS-7.

50. Petitioner constructed an underground service to a meter socket located on a pedestal near CVPS Line 72, Pole 42 on lands owned by Mr. Tarinelli. Tr. 11/15/02 at 87-88; exh. CVPS-7.

51. Petitioner believes that his license as an electrical contractor in Vermont entitles him to design, install, repair and maintain electrical installations. Tr. 11/15/02 at 13-14.

52. To serve the Manzke property, CVPS service would be delivered to a pedestal mounted meter and panel. From that point, the Petitioner proposes to install (and for Mr. Manzke to own, operate and maintain) a step-up transformer, a 4,800 volt primary overhead service spanning approximately fifteen pole lengths and a step down transformer to be located near the Manzke house. Tr. 11/15/02 at 71-74, 84-90, 105, 110; exh. CVPS-5.

53. The Petitioner's proposed plan for the development of a primary line to provide electric service to the Manzke property does not conform to CVPS's standards and specifications. Exh. CVPS-7.

54. Mr. Manzke has entered into an agreement with his neighbor, Mr. Tarinelli, such that they would jointly own a portion of the subject service extension to enable Mr. Tarinelli to obtain service at a future time should he desire electric utility service. Mr. Manzke acknowledged that he had not sought or obtained permission from CVPS to take service over jointly-owned customer facilities. Tr. 11/15/02 at 39, 51, 52, 61-65, 88-91.

55. Based on the information known by CVPS prior to the time of the technical hearing, CVPS conducted a study of the service extension proposed by Petitioner to determine whether it would deliver adequate service to the Manzke residence. Tr. 11/15/02 at 103-105; exh. CVPS-4.

56. The CVPS study found that the development of a service extension as proposed by Petitioner would result in lower fault current on the customer-owned primary portion of the extension. As a result, there is a greater likelihood that there would be an energized line lying on the ground should that section be knocked down by accident, falling trees or otherwise. Similar

faults would more likely be cleared when CVPS design and construction standards are applied. Tr. 11/15/02 at 105-117, 124; exh. CVPS-4.³

57. At the hearing, Petitioner provided more information on the design and materials proposed for the Manzke extension. Based on his expert judgment as a professional electrical engineer, CVPS Witness Morse stated that the results of the Company's fault current study, using the design information provided by the Petitioner at the hearing, would likely indicate even less fault current in the event of a failure on the customer-owned portion of the proposed extension. As a result, it would be less likely that a failure would be cleared. Tr. 11/15/02 at 106-108.

58. In its investigation into the establishment of service extension policy for Vermont electric companies, the Board has found that, given the significant potential that primary lines have to electrocute, assigning responsibility for these lines to residential customers potentially compromises the safety of these customers and others. Further, failure of a customer to properly maintain such a primary voltage line may undermine the reliability of the rest of the line and, therefore, affect other customers as well. Docket No. 5496, Order of September 21, 1999, at 14-16.

59. Petitioner's plan for the development of a customer-owned primary line to serve the Manzke residence does not conform to Central Vermont's distribution standards and specifications. Tr. 11/15/02 at 106, 137-138, 140; exh. CVPS-7.

60. CVPS acknowledges that some customer-owned primary lines do exist on CVPS's electric system. The Company believes that none have been added since September 21, 2000, the effective date of the revised CVPS service extension tariff. Customer-owned primary overhead lines fed by a step-up transformer also do exist on CVPS's system. This practice was also terminated in 1999 for new applicants, as a result of a CVPS procedure change. Central Vermont's currently approved Tariff incorporates these changes. Tr. 11/15/02 at 140-142; exhs. CVPS-1 and -7.

3. Note that the CVPS study found that the voltage drop on the Manzke service extension as proposed by Petitioner would likely be acceptable based upon Central Vermont's assumption that the Manzke load would be approximately 10 kva. Tr. 11/15/02 at 109-110. However, the Manzke load may be greater than the 10 kva assumption and, if so, the voltage drop might not be acceptable. Petitioner did not provide any information that would indicate whether or not Petitioner has attempted to calculate a load, or limit the voltage drop.

61. On October 24, 2002, CVPS informed Petitioner that the Company would not energize the underground service as requested because it did not conform to Central Vermont's distribution standards and specifications. Tr. 11/15/02 at 86-89; exh. CVPS-7.

62. Petitioner did not request prior approval from Central Vermont to develop an overhead primary circuit as a part of the Manzke line extension. No evidence was provided indicating that any formal request for a waiver has been sought or obtained from the Board. Tr. 11/15/02 at 87-88, 138-139, 144-145; exh. CVPS-7.⁴

63. On or about October 24, 2002, CVPS contacted Mr. Manzke to inform him that CVPS could not energize the underground service proposed by Petitioner. Subsequently Mr. Manzke informed Mr. Miller that he had spoken to the District No. 2 Environmental Commission office and was informed that he would be appraised of the permit status of the original CVPS proposed line extension during the week of October 28, 2002. Tr. 11/15/02 at 38-39, 43; exh. CVPS-7.

64. On October 30, 2002, the District No. 2 Environmental Commission issued an Act 250 permit with additional conditions to CVPS for the Manzke service extension. Tr. 11/15/02 at 43, 188-189; exh. CVPS-7.⁵

65. On November 1, 2002, Mr. Manzke contacted CVPS to inquire what the pleadings and Board Order in this docket were that had been served on him by the PSB and Central Vermont. At that time, CVPS explained that Petitioner, his contractor, had brought an action against the Company seeking relief including the energizing of the Manzke service extension. CVPS explained that the Contractor had constructed and proposed to construct the service extension in violation of the terms and conditions of the CVPS Tariff. At that time Mr. Manzke notified CVPS that he had engaged Petitioner to construct his service extension and requested a copy of the plans, specifications and materials list which were provided to him on November 5, 2002. Tr. 11/15/02 at 38-44, 138-139.

4. While the Petitioner seeks an order requiring that the Manzke underground service be energized, the Petition does not seek a waiver of, or otherwise acknowledge, the Tariff requirements applicable to customer-owned overhead lines or the requirements of the Board's Docket No. 5496 Order.

5. Central Vermont does not know whether Mr. Manzke needs, has applied for or has received an Act 250, or other applicable, permit for the development of the service extension proposed by Petitioner.

Discrimination and Improper Conduct

66. No direct evidence of discrimination or specific improper conduct was introduced by the Petitioner.

67. Mary Ann Fickett, a customer of the Petitioner, had complaints with the treatment she received from Central Vermont personnel, but she did not testify and the specifics of that treatment were not presented. Tr. 11/15/02 at 150 (Miller).

68. Charlene Belval, another customer of the Petitioner, apparently had complaints as well with Central Vermont, but Ms. Belval did not appear and her complaints remained unspecified. Tr. 11/15/02 at 153 (Miller).

Central Vermont Tariff Violations

69. Central Vermont admitted that they have violated their own tariff requirements such as leaving temporary service in place for years rather than months. Tr. 11/15/02 at 186-187 (Miller).

III. DISCUSSION

30 V.S.A. Sections 208 and 209 provide the Board with jurisdiction to hear and decide cases involving terms and conditions of regulated service between consumers and regulated utilities. *See North v. City of Burlington Electric Light Dept.*, 125 Vt. 240 (1965). In pertinent part, Section 208 provides:

"A complaint to the public service board may be made against a company subject to supervision under the provisions of this chapter concerning any claimed unlawful act or neglect adversely affecting the complainant, who may be a company or five or more individuals or, if less than five are so affected, then any one of them. The complainant may bring his complaint directly before the board or he may file his complaint with the department of public service which shall investigate such complaint and if sufficient cause exists, shall prosecute the same in the name of the state."

Id. Similarly, section 209(a) provides in pertinent part:

"On due notice, the board shall have jurisdiction to hear, determine, render judgment and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line or property subject to supervision under this chapter, and shall have like jurisdiction in all matters respecting:

- (1) The purity, quantity or quality of any product furnished or sold by any company subject to supervision under this chapter, and may prescribe the equipment for and standard of measurement, pressure or initial voltage of such product;
- (2) The providing for each kind of business subject to supervision under this chapter, suitable and convenient standard commercial units of product or service, which standards shall be lawful for the purposes of this chapter;
- (3) The manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public;
- (4) The price, toll, rate or rental charged by any company subject to supervision under this chapter, when unreasonable or in violation of law;
- (5) The sufficiency and maintenance of proper systems, plants, conduits, appliances, wires and exchanges, and when the public safety and welfare require the location of such wires or any portion thereof underground;
- (6) To restrain any company subject to supervision under this chapter from violations of law, unjust discriminations, usurpation or extortion . . .".

Id. Moreover, section 209(b) provides in pertinent part:

"The provisions of section 218 of this title notwithstanding, the public service board shall, under sections 803-804 of Title 3, adopt rules applicable to companies subject to this chapter which:

- (1) Regulate or prescribe terms and conditions of extension of utility service to customers or applicants for service including:

* * *

- (B) the extension of service lines . . .".

Id. When these statutes are read together, it is clear that the Board can and should decide the issues that have been raised concerning the terms and conditions that apply in connection with the extension of service to new locations such as that proposed by Mr. Manzke.

While the Board is authorized to determine whether Central Vermont has violated the Petitioner's right to design, construct and have energized the Manzke service extension, the issue of damages is not properly before this Board, but rather is an issue for another forum. *See Green*

Mountain Power Corporation v. Sprint Communications, Slip Opinion filed August 17, 2001, at 4-5, 172 Vt. 416 (2001).

As to the injunctive relief requested by the Petitioner, the Vermont Supreme Court has indicated that such relief will not be granted unless the Petitioner has clearly met its burden. State Buildings Div. v. Castleton B'd of Adjustment, 138 Vt. 250, 256 (1980), citing Committee to Save Bishop's House v. Medical Center Hospital of Vermont, Inc., 136 Vt. 213, 218 (1978); *see also* Docket No. 5962, Pet. of North American Telecommunications Corp., Order of 4/16/97 at 4.

In applying the preliminary injunction standards of Board Rule 2.406 (D), the Board has looked to the four-part test adopted by the Vermont Supreme Court, which is generally consistent with the language of Board Rule 2.406 (D). In Docket No. 6545, Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station and related transactions, Order of 7/26/02, the Board explained that when evaluating whether to grant a request for a preliminary injunction under the standards set out in the Board's rules the Board has adopted the following criteria:

- "(1) the likelihood of success upon the merits;
- (2) whether the party seeking relief will suffer irreparable injury if the relief is not granted;
- (3) whether the issuance of an injunction will substantially harm other parties; and
- (4) the location of the best interests of the public."

Id. at 4. *See also*: Docket No. 5686, In re: Central Vermont Public Service Corp., Order of 6/7/94 at 7-8, 14-16 (quoting Docket 5630, In re: Vermont Electric Cooperative, Inc., Order of 9/10/93 at 4); In re NET, 145 Vt. 309, 311 (1984); *see also* Docket No. 6331, In re: MCI WorldCom, Inc., Order of 4/20/00 at 4.

When applied to this case, I can only find that the Petitioner has failed to meet its burden primarily because once a tariff is adopted and approved by the Board it remains in effect until it is changed pursuant to the procedure set forth in 30 V.S.A. Section 225. *See* Carpenter v. Home

Telephone Co., 122 Vt. 50 (1960); and Jones v. Montpelier and Barre Light and Power Co., 96 Vt. 397 (1923).

While the Petitioner made much of the fact it constructed this service in compliance with the National Electric Code, it conceded that it had not attempted to comply with the conditions of the CVPS tariff. There can be no doubt that the Petitioner can construct a service extension, but nothing in its license empowers the Petitioner to demand that Central Vermont energize an extension that would be violative of its approved tariff.

While it is true that a service extension could be developed in a variety of ways which would meet the tariff requirements, the onus is on the Petitioner and those similarly situated to discuss with the utility the alternatives which would allow for the tariff requirements of the utility to be met in a particular situation. In the matter at hand, Central Vermont does make the tariff requirements available and suggests consultation before construction. Such consultation did not occur here.

As to the allegations of disparaging remarks and abuse of Petitioner's employees and customers, no direct evidence of such remarks was presented. While it is clear that Ms. Fickett and Ms. Belval did not wish to deal directly with certain Central Vermont employees, no evidence was presented as to any particular statements made by Central Vermont employees and neither Ms. Fickett nor Ms. Belval appeared.

Thus, since the Petitioner was unable to show likelihood of success on the merits, was further unable to show other parties would not suffer substantial harm, and finally, was unable to show that the best interests of the public was furthered by granting the injunction, the request for the injunction must be denied.

Notwithstanding the above, it is obvious that Mr. Manzke has worked in good faith with Central Vermont in the first instance, and after a substantial delay occurred in obtaining service, he in good faith again contracted with the Petitioner. He still has no service. It seems clear that in the interest of all parties dialogue should occur to maximize the use of the service construction as it presently exists so as to limit the cost of reworking the construction to meet the tariff requirements. This would also serve to limit potential damages and to expedite service connection to the site.

For instance, while Central Vermont proposes to use 40-foot poles on new lines, many 35-foot pole lines exist on their system. There is clearly no tariff requirement for 40-foot poles and I would hope that what I perceive to be strained relations between Central Vermont and the Petitioner do not translate into using such minimal concerns to stymie a project such as Mr. Manzke's.

VI. CONCLUSION

Based upon all the above evidence, Central Vermont Public Service Corporation should not be required to energize a service extension for Mr. Warner Manske that does not conform to the requirements of the CVPS tariff, and Chandler Electric Company's requests for injunctive relief, and for a preliminary and permanent injunction, should be denied.

To the extent these findings are inconsistent with any proposed findings, such proposed findings are denied.

A Proposal for Decision pursuant to 3 V.S.A. Section 811 has been served upon the parties to this case.

DATED at Montpelier, Vermont, this 29th day of January, 2003.

s/John D. Burke
John D. Burke
Hearing Officer

VII. DISCUSSION

The Board adopts the Hearing Officer's findings and recommendations in this docket.

A Proposal for Decision ("PFD") was sent to the parties on January 16, 2003, with a request that any comments should be filed by January 27, 2003.

On January 21, 2003, the DPS filed comments stating that it has reviewed and concurs in full with the PFD that was circulated in this matter.

On January 22, 2003, Chandler Electric Company ("Chandler Electric") filed its comments and a request for oral argument. In addition, Chandler Electric filed proposed new Exhibits 11 and 12, along with a "Request for Waiver and or Permission for a Residential Customer to Own a Primary Overhead Line Extension".

On January 27, 2003, Central Vermont Public Service Corporation ("CVPS") filed comments along with a "Motion to Exclude Supplemental Evidence Offered Out of Time".

On January 28, 2003, Chandler Electric filed a response to the CVPS comments and, in turn, CVPS filed a response on January 29, 2003, to the Chandler Electric filing of January 28, 2003.

Oral Argument, pursuant to 3 V.S.A. Section 811, was held on Wednesday, February 12, 2003, at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont. Notice to that effect was sent to all parties on January 30, 2003.

At the Oral Argument, Chandler Electric renewed its request that Mr. Warner Manzke be allowed to own and maintain a line extension (although Chandler Electric insists that the subject line is a service extension, not a line extension) to his new residence. Chandler Electric asked that new Exhibits 11, 12 and 13 be admitted into evidence. Exhibits 11 and 12 are diagrams depicting Chandler Electric's design for the Manzke line extension and Exhibit 13 is a series of 21 photographs depicting various electric lines. CVPS objected to the admission of these three exhibits into the record as being offered "out of time" and affording CVPS no opportunity for cross examination. We will allow Exhibits 11 and 12 into the record. Although CVPS does not have the opportunity for cross examination of these exhibits, allowing them into the record does

not harm CVPS as there is nothing in these two exhibits to support modifying the Hearing Officer's conclusions and recommendations. Exhibit 13 will not be allowed into the record, as the photographs were not properly authenticated at the original hearing (particularly as to time or location) and we believe it would encourage costly and inefficient litigation to allow post-hearing submission of such material. At the hearing in this docket, Chandler Electric had the opportunity and did attempt, without success, to have some (if not all) of the subject photographs admitted into evidence. As a result, the CVPS "Motion to Exclude Supplemental Evidence Offered Out of Time" is denied with respect to Exhibits 11 and 12. The motion is granted with respect to proposed Exhibit 13.

The Board places great value on standardized design of distribution systems and the standardization of equipment, in conjunction with compliance of the utility's tariff and national safety standards. Standardization allows for faster, safer and more reliable maintenance and repair of utility facilities, plus an efficient replacement parts inventory. The Board, by Rule, requires that all utility construction comply with the requirements of the National Electrical Safety Code, a nationally accepted safety standard. Even if Chandler Electric's proposed design, as depicted in Exhibits 11 and 12, is equal to or even superior to the CVPS design (there is, however, no evidence to support the quality of the Chandler Electric design), we reject such design in favor of the standard and proven reliability of current accepted distribution utility line design in accordance with CVPS's tariff. These standards were readily available to all potential contractors to the system, including Chandler Electric, which apparently chose not to obtain, consider, or comply with them. It should be clear to all that compliance with the standards set out in these tariffs is a mandatory prerequisite for the right to request energizing a line connected to the common grid.⁶

Based upon all of the above, the Chandler Electric "Request for Waiver and or Permission for a Residential Customer to Own a Primary Overhead Line Extension" is denied.

6. In light of this statement, CVPS' cross-motion for injunctive relief appears moot. If CVPS believes otherwise, it shall file (within five days) a motion explaining its position.

There are a few additional items on which the Board wishes to comment and require further action on the part of CVPS.

First, in its January 27, 2003, response, CVPS requested that the Board omit proposed finding No. 69 concerning CVPS's compliance with certain tariff requirements. We conclude that finding No. 69 is properly supported by the record and we will not modify or omit it.

Second, the Board is concerned about instances where CVPS has provided service with "temporary" attachments (such as wires attached to trees) that have apparently been in place for ten years or more. CVPS stated that while its intention is to use "temporary" service connections for a minimum of time, there have been cases where such attachments have inadvertently remained in place for long periods of time. Such instances suggest that a tightening of the company's internal line extension practices and procedures may be in order. As a result, we will require that CVPS file a report, within six weeks of the date of this Order, discussing the results of an internal review of its practices and procedures related to its line extension tariff, including the extent, if any, to which CVPS itself has not been in compliance with that tariff.

Finally, this docket has focused on a dispute between Chandler Electric and CVPS. We are mindful, however, that the person most affected by this dispute is not a party here: Warner Manzke, the customer for which service has been requested. Because Mr. Manzke is not a party, we have not directly heard his concerns in this matter.⁷ We hereby require CVPS to make every reasonable effort to provide electric service to Mr. Manzke as soon as possible, consistent with the provisions of its tariff, and to seek to minimize the cost to Mr. Manzke. Within two weeks of the date of this Order, CVPS shall submit a report of the progress and a timetable for providing electric service to Mr. Manzke.

7. Mr. Manzke attended the hearing and testified as a witness for Chandler Electric, but Chandler Electric did not represent Mr. Manzke in this docket.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Chandler Electric Company's requests for injunctive relief, and for a preliminary and permanent injunction, are denied.
2. Chandler Electric Company's request for damages on account of work stoppages engendered by its failure to abide by the terms and conditions of the CVPS Tariff is denied.
3. Central Vermont Public Service Corporation shall not be required to energize a service extension for Mr. Warner Manzke that does not conform to the requirements of the CVPS Tariff.
4. Central Vermont Public Service Corporation shall take all reasonable steps to energize Mr. Manzke's service extension as soon as the service has been constructed to conform to the CVPS design specifications, and is consistent with the requirements of the applicable CVPS Tariff.
5. Central Vermont Public Service Corporation shall make the following filings:
 - a. On or before February 28, 2003, a motion explaining its position, if it believes that its cross-motion for injunctive relief is not moot.
 - b. On or before March 7, 2003, a report of the progress and a timetable for providing electric service to Warner Manzke.
 - c. On or before April 4, 2003, a report discussing the results of an internal review of its practices and procedures related to its line extension tariff, including the extent, if any, to which Central Vermont Public Service Corporation itself has not been in compliance with that tariff.

DATED at Montpelier, Vermont, this 21st day of February, 2003.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: February 21, 2003

ATTEST: s/Susan H. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.